

Introduced by Senator MaldonadoFebruary 26, 2009

An act to amend Section 653b of the Penal Code, relating to loitering.

LEGISLATIVE COUNSEL'S DIGEST

SB 492, as introduced, Maldonado. Loitering: registered street gangs.

Under existing law, it is a misdemeanor for any person to loiter after being asked to leave, as specified, about any school or public place at or near which children attend or normally congregate. Existing law establishes enhanced misdemeanor penalties for this crime if the person is required to register as a sex offender.

This bill would also apply these enhanced penalties for that crime if the person has ever been required to register for criminal street gang activity. The bill would specify that the minimum penalties in these enhanced penalties shall not be applied if they would prevent an offender from attending school if that offender is enrolled in school and is subject to these enhanced penalties only because he or she has been required to register for criminal street gang activity, as specified. Because the bill would increase the penalties of an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 653b of the Penal Code is amended to read:

653b. (a) Except as provided in subdivision (b), every person who loiters about any school or public place at or near which children attend or normally congregate and who remains at any school or public place at or near which children attend or normally congregate, or who reenters or comes upon a school or place within 72 hours, after being asked to leave by the chief administrative official of that school or, in the absence of the chief administrative official, the person acting as the chief administrative official, or by a member of the security patrol of the school district who has been given authorization, in writing, by the chief administrative official of that school to act as his or her agent in performing this duty, or a city police officer, or sheriff or deputy sheriff, or Department of the California Highway Patrol peace officer is a vagrant, and is punishable by a fine of not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not exceeding six months, or by both the fine and the imprisonment.

(b) Every person required to register as a sex offender *or who has ever been required to register for criminal street gang activity pursuant to Section 186.30 of the Penal Code* who violates subdivision (a) shall be punished as follows:

(1) Upon a first conviction, by a fine not exceeding two thousand dollars (\$2,000), by imprisonment in a county jail for a period of not more than six months, or by both that fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of this section or former Section 653g, by imprisonment in a county jail for a period of not less than 10 days or more than six months, or by both imprisonment and a fine of not exceeding two thousand dollars (\$2,000), and shall not be released on probation, parole, or any other basis until he or she has served at least 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of this section or former Section 653g, by imprisonment in a county jail for a period of not less than 90 days or more than six months, or by both imprisonment and a fine of not exceeding two thousand dollars (\$2,000), and shall not be

1 released on probation, parole, or any other basis until he or she
2 has served at least 90 days.

3 *(4) Notwithstanding any other provision in this subdivision, the*
4 *minimum penalties in this subdivision shall not be applied if they*
5 *would prevent any person who has been required to register for*
6 *criminal street gang activity and who is enrolled in school from*
7 *attending school if this subdivision only applies to that person*
8 *because that person has been required to register for criminal*
9 *street gang activity.*

10 (c) As used in this section, “loiter” means to delay, to linger, or
11 to idle about a school or public place without lawful business for
12 being present.

13 (d) Nothing in this section shall preclude or prohibit prosecution
14 under any other provision of law.

15 SEC. 2. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.